

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17509 of 2015

Parath Sarthi son of Late Satish Chandra Gupta, Resident of Mohalla Shora
Godown, Near Nurruddin Ganj, P.S. Malsalami, Patna City

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education,
Government of Bihar, Patna
2. The Principal Secretary, Department of Education, Government of Bihar,
Patna
3. The Additional Secretary, Department of Education, Government of Bihar,
Patna
4. The Special Director (Secondary Education), Department of Education,
Government of Bihar, Patna
5. Bihar Sanskrit Shiksha Board, through its Chairman, Behind Hardings Road,
Patna
6. The Chairman, Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna
7. The Secretary, Bihar Sanskrit Shiksha Board, Behind Hardings Road, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Durga Nand Jha, Advocate
For the State	:	Mr. Sushant Praveer, AC to SC 9
For SS Board	:	Mr. S.S.Sundaram, Advocate
		Mr. Shashank Shekhar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 03-12-2018 Considering the judgment of the Apex Court in the
case of Krishna Kumar Singh Vs. The State of Bihar & Ors.:
(2017) 3 SCC 1, particularly paras 177 to 181 of the judgment,
which are quoted below, the Court is not inclined to enter into
the factual aspect of the matter. The respondents are obliged to
take appropriate decision with regard to the claim of the
petitioner.

177. All the Ordinances have ceased to operate
and nothing done under them now survives after
they have ceased to operate. The validity of the



first three Ordinances was not challenged by the employees. There is no material before us, one way or the other, to hold that the promulgation of the first Ordinance and its repromulgation by the second and third Ordinances is invalid. Therefore, one can only assume that the first three Ordinances are valid and the employees are entitled to the benefits under them till the date these Ordinances ceased to operate and not beyond, since these Ordinances were not replaced by an Act of the State Legislature. I may mention, en passant, that it is not every repromulgation of an Ordinance that is prohibited by *D.C. Wadhwa v. State of Bihar*. There is no universal or blanket prohibition against repromulgation of an Ordinance, but it should not be a mechanical repromulgation and should be a very rare occurrence. Additionally, a responsibility is cast on the Governor of a State by the Constitution to promulgate or repromulgate an Ordinance only if he is satisfied of the existence of circumstances rendering immediate action necessary. There could be situations, though very rare, when repromulgation is necessary, but it is not necessary for me to delve into this issue insofar as the first three Ordinances are concerned.

178. Only the fourth and subsequent Ordinances were challenged by the employees. As far as the fourth and subsequent Ordinances are concerned, their promulgation and repromulgation was not adequately justified by the State of Bihar despite a specific challenge. There was no immediate action required to be taken necessitating the promulgation of the fourth Ordinance and its repromulgation by subsequent Ordinances. I agree that the fourth Ordinance and subsequent Ordinances should be struck down.

179. In the absence of any challenge to the



first three Ordinances and since I have assumed that these three Ordinances are valid, the benefit given to the employees (such as salary and perks) by these Ordinances till they ceased to operate, are justified. However, these three Ordinances did not and could not grant any enduring or irreversible right or benefits to the employees and the employees did not acquire any enduring or irreversible right or benefits under these three Ordinances. Any right or benefits acquired by them terminated when the Ordinances ceased to operate.

180. Despite a specific challenge made to the fourth and subsequent Ordinances, the State of Bihar has not justified their promulgation. They are, therefore, struck down.

181. The directions given by the High Court for payment of salary (if not already paid) and interest thereon need not be disturbed. The reference is answered accordingly.

In view of the above, the respondents are required to consider the direction of the Apex Court in the case of Krishna Kant Singh (supra) and take appropriate decision within a maximum period of four months from the date of receipt/production of a copy of this order.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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